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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,000	11/28/2000	Anthony J. Polverino	MBHB00-450-A	6633

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EXAMINER

RAWLINGS, STEPHEN L

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 12/31/2003

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,000

Applicant(s)

POLVERINO ET AL.

Examiner

Stephen L. Rawlings, Ph.D.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9,13-16,46,47 and 57-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,13,14,16,57 and 61 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 15,46,47,58-60 and 62 is/are objected to.
- 8) ☒ Claim(s) 15,46,47,58-60 and 62 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 27.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The amendment filed August 20, 2003 in Paper No. 26 is acknowledged and has been entered. Claims 15, 57, 58, and 62 have been amended.
2. Claims 9, 13-16, 46, 47, and 57-62 are pending in the application. Claims 9, 13, 14, 16, 57, and 61 and, in part, claims 15, 46, 47, 58-60, and 62 are currently under prosecution.

Election/Restrictions

3. Newly amended claims 15, 46, 47, 58-60, and 62 are directed, in part, to inventions that are independent or distinct from the invention originally claimed for the following reasons:

Claims 15, 58, and 62 are drawn to a polypeptide comprising the amino acid sequence set forth in SEQ ID NO: 5, wherein isoleucine at position 12 may be methionine, serine at position 18 may be cysteine, isoleucine at position 19 may be valine, threonine at position 22 may be serine, lysine at position 25 may be arginine, arginine at position 26 may be lysine, arginine at position 27 may be histidine, asparagine at position 51 may be threonine, histidine at position 55 may be asparagine, lysine at position 61 may be arginine, lysine at position 64 may be arginine, and valine at position 81 may be isoleucine, and the amino acid at positions 5, 8, 10, 11, 14, 17, 20, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43, 4, 46, 47, 48, 49, 50, 52, 57, 59, 62, 65, 66, 67, 68, 69, 70, or 71 may be any one of the other naturally occurring amino acids.

Claims 15, 58, and 62 encompass the elected invention, i.e., a polypeptide comprising the amino acid sequence set forth in SEQ ID NO: 5. However, claims 15, 58, and 62 also encompass a multitude of other distinct inventions, or distinct polypeptides comprising amino acid sequences that differ from the amino acid sequence of the elected invention. Because these inventions are distinct and also because the search required for any one other invention encompassed by the present

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claims is not the same at the search that was required for the elected invention, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 15, 46, 47, 58-60, and 62, to the extent that the claims are drawn to non-elected inventions, are withdrawn from consideration as being directed to a non-elected invention. In other words, claims 15, 58, and 62 are only considered herein to the extent that the claims are drawn to a polypeptide comprising the amino acid sequence set forth in SEQ ID NO: 5. See 37 CFR 1.142(b) and MPEP § 821.03.

Grounds of Objection and Rejection Withdrawn

4. Unless specifically reiterated below, the grounds of objection and rejection set forth in the previous Office action mailed May 20, 2003 (Paper No. 24) have been withdrawn.

Claim Objections

5. Claims 15, 46, 47, 58-60, and 62 are objected to because "substituted" is misspelled in claims 15, 58, and 62, in lines 17, 21, and 18, respectively.

6. Claims 15, 46, 47, 58-60, and 62 are objected to because claims 15, 58, and 62 are encompass the subject matter of non-elected inventions. Appropriate correction is required.

Conclusion

7. Claims 9, 13, 14, 16, 57, and 61 are allowed. Claims 15, 46, 47, 58-60, and 62 are not allowed.

8. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (703) 305-3008. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony C. Caputa, Ph.D. can be reached on (703) 308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Stephen L. Rawlings, Ph.D.
Examiner
Art Unit 1642

slr
December 18, 2003


ANTHONY C. CAPUTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1000